Decision 02-10-023 October 3, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Construction Authority for an order authorizing the construction of two light rail transit tracks at-grade crossing West Avenue 45 in the City and County of Los Angeles, California.	Application 00-10-012 (Filed October 11, 2000)
And Related Matters.	Application 01-06-011 Application 00-11-050 Application 00-11-040 Application 00-11-034 Application 00-11-033 Application 00-11-032 Application 00-11-029 Application 00-11-016 Application 00-11-015 Application 00-10-050 Application 00-10-039 Application 00-10-033 Application 00-10-020

ORDER MODIFYING DECISION (D.) 02-05-047 AND DENYING REHEARING

In D.02-05-047, we approved the construction of a number of crossings relating to the proposed light rail service between the Union Station in Los Angeles and Sierra Madre Blvd. in Pasadena by the Los Angeles to Pasadena Metro Blue Line Construction Authority ("BLA" or "Authority").

On June 14, 2002, Citizens Against the Blue Line At-Grade ("NoBLAG") and Mount Washington Association ("MWA" or "Association") applied for rehearing of D.02-05-047. NoBLAG contends that there is no

evidence to support the decision's findings regarding the safety of the proposed Pasadena at-grade crossings, particularly with respect to the Del Mar crossing. NoBLAG further argues that the Commission failed to conduct an independent environmental review as required by CEQA. MWA argues that the Commission erred in denying MWA's request for a no-horn zone at the Avenue 45 and Avenue 50 crossings. MWA also requests oral argument on its application for rehearing.

We have reviewed each and every allegation of error raised in the applications for rehearing and are of the opinion that applicants have not demonstrated good cause for rehearing. However, we will modify the decision to clarify our reasons for denying the request for a no-horn zone at the Avenue 45 and Avenue 50 crossings in the Mount Washington area of the City of Los Angeles. In addition, we will deny MWA's request for oral argument. We do not believe that MWA has demonstrated that oral argument is warranted pursuant to Rule 86.3 of the Commission's Rules of Practice and Procedure.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The total length of the proposed Blue Line project is 13.6 miles and traverses the cities of Los Angeles, South Pasadena and Pasadena. The project includes a total of 28 street crossings at-grade and 41 separated crossings. It is expected that between 200 and 250 trains will be operating per day, at speeds up to 55 miles per hour.

Planning for the Blue Line project began as early as 1980. Originally, the Los Angeles County Transportation Commission ("LACTC") was responsible for the project. LACTC was succeeded by the Los Angles County Metropolitan Transportation Authority ("MTA"). In 1998, the MTA suspended completion of the project because of financial difficulties. At that time, Senate Bill ("SB") 1847 was enacted, which gave the Blue Line Authority responsibility for completing the project. (See Pub. Util. Code § 132400 et seq.) Upon completion of the project, the line will be returned to MTA to operate. Over the years, BLA and it

predecessor agencies have prepared numerous environmental document for the project.

In D.95-09-067, D.95-01-043, D.95-02-030 and D.00-12-007, the Commission approved the first portion of this project. The 14 applications relating to this final phase of the project were filed between October 11, 2000 and June 8, 2001. Public participation hearings were held for the project prior to evidentiary hearings. Although participants overwhelmingly supported the project, there has been much controversy about BLA's proposal that some crossings be at-grade, rather than separated.

Evidentiary hearings were held from November 6 through December 14, 2001. In D.02-01-035 ("Interim Decision"), the Commission approved nine applications for crossings that were not in controversy (A.00-10-020, A.00-10-033, A.00-10-039, A.00-10-050, A.00-11-029, A.00-11-032, A.00-10-033, A.00-11-034 and A.00-11-050). Those applications are not addressed in the instant decision. After opening and reply briefs were filed, the case was submitted on February 25, 2002.

On April 16, 2002, the Proposed Decision of the Administrative Law Judge ("ALJ's PD") was mailed to the parties. Regarding the five applications at issue, the ALJ's PD approved four of the applications, but denied BLA permission to construct an at-grade crossing at Del Mar Boulevard in Pasadena. The ALJ's PD also ordered that train horns are not to be used except in emergencies at the Avenue 45 and Avenue 50 grade crossings in Los Angeles. On the same day, the Proposed Alternate Decision of Commissioner Duque ("Alternate PD") was mailed. The Alternate PD also limited the use of horns on Avenues 45 and 50 to emergencies, but, unlike the ALJ's PD, granted BLA permission to construct an at-grade at Del Mar Boulevard.

On May 21, 2002, the Commission issued D.02-05-047. The decision grants BLA permission to construct all of the at-grade crossings at issue, including

the Del Mar Boulevard crossing, and eliminates the no-horn zone at Avenues 45 and 50. As stated above, on June 14, 2002, applications for rehearing were filed by NoBLAG and MWA. A response to both applications for rehearing was filed by BLA. The Rail Crossings Engineering Section of the Consumer Protection and Safety Division ("Staff") filed a response in support of NoBLAG application for rehearing.

II. DISCUSSION

A. NoBLAG's Application for Rehearing

1. The Commission considered various factors in determining that grade separations are "impracticable"

Both NoBLAG and Staff contend that the evidence does not support the Commission's findings. Staff specifically contends "no evidence was presented by the applicant that any grade separation was 'impracticable.'" (Staff's Response at p. 2, quoting Staff's Comments on the Alternate PD, filed, May 6, at p. 3.) After reviewing the applications for rehearing and our decision, we believe there may be some confusion about the standard we used to determine whether grade separations are impracticable. Therefore, we will clarify the factors we considered in reaching our decision.

Public Utilities Code section 1201 gives the Commission jurisdiction over the construction of railroad tracks across public streets or vice-versa. Pursuant to Public Utilities Code section 1202, the Commission has exclusive power to determine the manner and the terms of installation, etc. of each such crossing (Pub. Util. Code § 1202(a)), and "[t]o require, where in its judgment it would be practicable, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made . . . ." (Pub. Util. Code § 1202(c).) Rules 38(d) and 40 of the Commission's Rules of Practice and Procedure require that applications to construct at-grade crossings must contain a statement showing why a grade separation is not practicable.

In City of San Mateo, D.82-04-033 (1982) 8 Cal.P.U.C.2d 572, the leading case on the meaning and application of the term "practicable," the Commission discussed at length the safety benefits of grade-separated crossings. (City of San Mateo, supra, at pp. 580-581.) City of San Mateo concludes:

> Today in this State a proponent who desires to construct a new at-grade crossing over mainline railroad trackage carrying any appreciable volume of passenger traffic has a very heavy burden to carry. . . . [H]e must convincingly show both that a separation is impracticable and that the public convenience and necessity absolutely require a crossing at grade.

(City of San Mateo, supra, at p. 581.) The Commission also noted that the word used in the statute is "practicable" rather than "practical."

> "Practicable" means being possible physically of performance, a capability of being used, a feasibility of construction. On the other hand, "practical" connotes the means to build, the possibility of financing."

(City of San Mateo, supra, at p. 581, fn. 8, quoting Webster's New Dictionary of Synonyms (1973) at p. 625.)

Recognizing that it is the rare case where it is physically infeasible or impossible to construct a grade separation (see D.02-05-047 at p. 11), we determined that, in contrast to City of San Mateo, a number of factors should be considered in reviewing an application for an at-grade crossing, including the costs of a grade separated crossing versus an at-grade crossing, in determining whether a grade separation is practicable. (See D.02-05-047 at p. 12.) Those factors include the following:

1. A convincing showing by the applicant that all potential safety hazards have been eliminated.
2. The concurrence of local community authorities.
3. The concurrence of local emergency authorities.
4. The opinions of the general public, specifically those who may be affected by an at-grade crossing.

> 5. The comparative costs of an at-grade crossing in comparison with a grade separation, although this factor is much less persuasive that safety considerations.
>
> 6. A recommendation by Staff indicating that it concurs in the safety of the proposed at-grade crossing.

(D.02-05-047 at p. 12.)

Safety, of course, is always our primary concern. Although we rejected BLA's argument that a different legal standard should apply to light rail, we recognize that whether or not a particular crossing is safe may well depend on whether the crossing is used by light rail exclusively or by heavy rail. (See D.02-05-047 at p. 10.) This Commission and federal agencies have a long history of favoring grade separations for heavy rail. (See City of San Mateo, supra, at pp. 580-581.)

As Staff has pointed out, light rail, with its slower speeds, lighter railcars, shorter stopping distances and quicker stopping times, generally support a different safety standard.

> [T]he safety hazards posed by light rail transit systems at street/highway crossings are substantially reduced in comparison to those posed by commuter railroad systems considered by the Commission in the City of San Mateo case.

(Staff's Prehearing Brief on the Legal Issue of the "Practicability" of Grade Separations, filed October 26, 2001, at p. 7.)

In addition, as BLA has argued, light rail, by definition, involves at-grade operations. (See, e.g., BLA's Opening Brief, filed February 7, 2001, at pp. 33-39.) General Order 143-B defines "Light Rail Transit" as "[a] mode of urban transportation employing light-rail vehicles capable of operating on all of the alignment classifications described in this General Order." (General Order 143-B,

section 2.08.)[1] Similarly, when a light rail system is subject to traffic signals, as in the case of streetcar operating on a non-exclusive right-of way, our review of any proposed at-grade crossings would consider the relative safety of this type of operation. (See D.02-05-047 at p. 23.)

Thus, our decision to approve the at-grade crossings at issue here must stand on the particular facts of this case, including the fact that the crossings will be used exclusively for light rail.

2. The factual findings of the decision regarding the safety of the Pasadena at-grade crossings are supported by substantial evidence

NoBLAG contends that the decision violates Public Utilities Code section 1705 because the evidence does not support the Commission's factual determinations regarding the Pasadena crossings, including the Del Mar Boulevard crossing. In particular, NoBLAG contends there is no evidence to support Findings of Fact Nos. 36 and 37 of the decision. In its response, Staff agrees with NoBLAG that the evidence does not support the decision's findings on the Pasadena crossings. BLA asserts that NoBLAG fails to substantiate its claim that the decision's findings in support of the at-grade crossing at Del Mar Boulevard are not based on the evidence.

Public Utilities Code section 1705 requires Commission decisions to contain, "separately stated, findings of fact and conclusions of law on all issues material to the order or decision." In addition, Public Utilities Code section 1756 provides that a court may overturn a decision if it determines that "[t]he decision of the Commission is not supported by the findings" or that "[t]he findings in the

[1] Alignment classifications are either (1) exclusive (a right-of-way without at-grade crossings, which is grade-separated or protected); (2) semi-exclusive (e.g., fully exclusive right-of-way with at-grade crossings); or (3) non-exclusive (mixed traffic operation -- surface streets). (General Order 143-B, section 9.04.)

decision are not supported by substantial evidence in light of the record as a whole."

As BLA points out in its response, while NoBLAG appears to take particular exception to the decision's conclusions regarding the Del Mar Boulevard at-grade crossing, the findings of fact referenced by NoBLAG relate to the three other Pasadena crossings (California Boulevard, Glenarm Street, and Fillmore Street) and not to the Del Mar crossing. (See D.02-05-047 at p. 32, Findings of Fact Nos. 36 and 37.) Similarly, NoBlag's only other reference to the decision is to a passage that relates only to the configurations, sight lines and traffic levels at the three Pasadena crossing other than Del Mar. (See D.02-05-047 at p. 27.)

With one exception, NoBLAG's references to the record do not deal with any of the Pasadena crossings. Rather, the transcript citations deal with crossings at Pasadena Avenue in South Pasadena (Tr. at p. 1822 [Stone/BLA]) and Avenue 45 in Los Angeles (Tr. at pp. 1552-1556, 1593-1597 [Stone/BLA]). The one exception is a reference to traffic levels at Del Mar. (Tr. at pp. 932-949 [Kaku/BLA].) However, that testimony is consistent with the findings of fact in the decision. (See D.02-05-047 at p. 31, Finding of Fact No. 32.)

A review of the evidence in this case indicates that that the record as a whole supports our decision. As we state in D.02-05-047, after the close of hearings in this case, NoBLAG submitted a declaration indicating that on December 21, 2001 the City of Pasadena announced approval of a major housing complex at the Del Mar Boulevard intersection.[2] The proposed complex includes 347 apartments, several businesses, and 1200-1500 parking spaces. (See Declaration of Karen Cutts, filed January 24, 2002.)

[2] The City's Zoning Hearing Officer granted eight zoning variances and approved the project's EIR.

We recognize that approval of the proposed Del Mar complex raises issues concerning the added traffic and the restricted sight lines resulting from the project. (D.02-05-047 at pp. 26-27.) However, we considered these issues in reviewing the safety aspects of the Del Mar crossing. Furthermore, we imposed additional mitigation measures to ensure that the crossing is safe. (D.02-05-047 at pp. 25-27.) Our conclusion was based on evidence demonstrating the safety of the four-quadrant gate, even where sight lines are impaired. (See, e.g., Tr. 1138-1139 [Korve/BLA]; see also Ex. 18 at pp. 32-36, 46-48 [Stone/BLA]; Ex. 35 at pp. 3-6 [Korve/BLA].) Regarding the other Pasadena crossings, NoBLAG has not pointed to any evidence to support its claims. For these reasons, we find that NoBLAG's argument is without merit.

Finally, as stated above, Staff asserts that there is no evidence that any grade separation was "impracticable." Given the criteria that we considered in determining whether to approve the at-grade crossings at issue here, the evidence amply supports our conclusions that grade separations at Avenues 45 and 50, Avenues 51 through 57, and the Pasadena crossings are not practicable.

3. The Commission is not required to conduct an independent environmental review of the Pasadena at-grade crossings

NoBLAG contends that the decision violates the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.) because the environmental documents prepared by the lead agency are inadequate. NoBLAG asserts that the environmental documents do not contain any environmental assessment of the four Pasadena crossings. NoBLAG further argues that because of changed circumstances, supplemental or subsequent environmental review is required pursuant to Public Resources Code section 21166.

BLA responds that the environmental documents describe all of the grade crossings on the Blue Line system (28 at-grade crossings and 41 separated

crossings), that NoBLAG's criticisms come to far too late in the environmental review process, and that there is no basis for a subsequent or supplemental environmental impact report ("EIR") due to changed circumstances.[3]

For CEQA purposes, the "project" under review in this case is the design and construction of the entire Los Angeles to Pasadena Metro Blue Line light rail system. The "lead agency" for the project is BLA, successor in interest to MTA and LACTC. The Commission is a "responsible agency" and is required to consider the environmental documents prepared by the lead agency before granting authority to construct. (See CEQA Guidelines §§ 15050(b), 15096(a).)

The issues raised by NoBLAG have been addressed repeatedly and extensively in the course of this proceeding. In D.02-01-035, we found that the environmental effects associated with all of the grade crossings were analyzed in the environmental documents for the project. (D.02-01-035 at pp.11-12.) In D.02-05-047, we determined that any challenges to the adequacy of the environmental documents should have been raised when the lead agency considered and certified those documents, and not at this late stage. (See D.02-05-047 at p. 14.)[4] Similarly, we rejected NoBLAG's challenge based on changed circumstances because Addendum #3 of the environmental documents, which was adopted in October 2000, determined that the facts triggering a subsequent or supplemental EIR were not present. (D.02-05-047 at p. 15.)

Nevertheless, we have thoroughly considered NoBLAG's claims regarding adequacy of the EIR and find that they are without merit. The time limits for challenging the lead agency's environmental documents are long past.

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[3] The environmental documents consist of the following: Draft EIR (1988), Final EIR (1990), Mitigated Negative Declaration (1991), Final Supplemental EIR (1993), Final Supplemental EIR #2 (1994), Addendum #1 (1995), Addendum #2 (1996), and Addendum #3 (2000). (See D.02-01-035 at pp. 10-11.)

[4] Of the 14 applications at issue in this proceeding, only two involved crossings for which any significant environmental impact had been identified. We determined that those impacts were not within the scope of the Commission authority over grade crossings. (See D.02-01-035 at pp. 13-14; D.02-05-047 at pp. 14, 32, Finding of Fact No. 40.)

With limited exceptions, a final EIR is conclusively presumed to be valid and binding on a responsible agency unless a timely challenge is filed pursuant to Public Resources Code section 21167. (See Pub. Resources Code §§ 21080.1 and 21167.2; see also CEQA Guidelines § 15231.)

There are only two circumstances under which a responsible agency may conduct further independent environmental review. (See, e.g., CEQA Guideline § 15096(e)(4).) First, a responsible agency may assume the lead agency role pursuant to CEQA Guidelines section 15052(a)(3). That section provides that where a responsible agency is called upon to grant an approval for a project subject to CEQA for which another agency was the appropriate lead agency, the responsible agency shall assume the role of lead agency when "the lead agency prepared inadequate environmental documents without consulting with the responsible agency as require by Sections 15072 [notice of intent to adopt negative declaration] or 15082 [notice of preparation of EIR], and the statute of limitations has expired for a challenge" to the lead agency's actions. (CEQA Guidelines § 15052(a)(3). Emphasis added.)

CEQA Guidelines section 15052(a)(3) is clearly not applicable here because the lead agency provided the appropriate notices to the Commission and the Commission had the opportunity to comment on the environmental review. Thus, the only remaining issue is whether the Commission is required to prepare a subsequent or supplemental environmental review.

Second, a subsequent environmental impact report ("EIR")[5] or negative declaration may be required where (1) substantial changes are proposed in the project which will require major revisions to the EIR; (2) substantial changes occur with respect to the circumstances under which the project is being implemented undertaken which will require major revisions to the EIR; or (3) new

[5] Where the changes are minor, a supplement or addendum may be prepared rather than a subsequent EIR. (CEQA Guidelines §§ 15163, 15164.)

information becomes available, which was not known and could not have been known at the time the EIR was certified. (Pub. Resources Code § 21166; see also CEQA Guidelines § 15162.)

NoBLAG contends that no analysis of traffic-related impacts of the Blue Line project at the Pasadena crossings has been conducted since 1992. Since then, according to NoBLAG, there have been substantial changed circumstances because of an intense development boom in the area of the Pasadena crossings. NoBLAG argues that the Commission is required to prepare a supplemental or subsequent EIR because of these changed circumstances.

However, as stated above, Addendum #3 determined that the facts triggering a subsequent or supplemental EIR were not present. Addendum #3 is presumed to be final and valid under the relevant CEQA provisions discussed above. Therefore, NoBLAG has failed to demonstrate that the Commission was required, or even permitted, to conduct any subsequent environmental review of this project.

B. Mount Washington Association's Application for Rehearing

1. The Commission did not err in denying Mount Washington Association's request for a no-horn zone at Avenues 45 and 50

Mount Washington Association ("MWA" or "Association") argues that the Commission erred in denying its request for a no-horn zone at the Avenue 45 and Avenue 50 crossings. MWA contends that denial of its request for a no-horn zone is not supported by the findings or by substantial evidence, and that it is based on an inaccurate statement of the parties' positions. In addition, MWA contends that the decision disregards the legislative directives of 1202(d), which finds that there is a growing need to mitigate train horn noise, and gives the Commission power to authorize pilot projects to evaluate alternative safety devices.

BLA responds that the decision does not err in declining to adopt a no-horn zone. BLA points to testimony that indicated that the noise from the light rail operations is consistent with community noise levels in the Mount Washington area. BLA also states that the issue of the use of horns is an operational issue that should be addressed by MTA, the system operator. (BLA's Response to Applications for Rehearing, filed July 2, 2002, at pp. 10-13.)

Upon review, we recognize that we did not clearly articulate our reasons for rejecting the request for a no-horn zone. While it appears that the Commission may grant exemptions to General Order 143-B, the evidence in this case does not clearly establish (1) that the noise is so excessive as to justify an exemption to General Order 143-B, or (2) that the crossing will be safe without horns. We will modify the decision accordingly.

Furthermore, while all parties appear to agree in theory that the Commission may grant exemptions to the rules contained in General Order 143-B, parties have disputed the applicability of the statutes discussed in the decision. For example, Staff has argued that neither Public Utilities Code section 1202(d)(2)(A), which allows the Commission to authorize pilot projects to test the utility and safety of stationary warning devices as an alternative to trains sounding their horns at crossings, nor section 7604, which requires locomotives to be equipped with a bell, whistle, or siren, is applicable to light rail. (See Staff's Comments on the ALJ's PD, filed May 6, 2002, at pp. 11-14.) It has also been disputed whether 7604(a)(1), which states that, in a city, the sounding of audible warnings shall be at the discretion of the operator, allows the Commission to establish a no-horn zone.

Because we are denying the exemption at this time, it is not necessary to reach these issues here. Rather, the parameters of Public Utilities Code sections 1202(d)(1)(A) and 7604 are better left to such time that we may be called upon to reconsider whether to establish a no-horn zone. Therefore, we will modify the

decision to eliminate the conclusions reached regarding the applicability of those sections.

Although BLA opposes the establishment of a no-horn zone at this time, BLA suggests that MWA should pursue this issue by applying for an exemption to General Order 143-B, or by applying for a pilot no-horn zone pursuant Public Utilities Code section 1202(d). (BLA's Response at to Applications for Rehearing, filed July 2, 2002, at p. 16.) Indeed, BLA's own witness testified: "I hope that there would be an opportunity for the CPUC to get behind such a [no horn zone] pilot project to test its safety at a location like this." However, BLA's witness stated that the BLA could not unilaterally make such a request because MTA is the system operator. (Tr. 1580 [Stone/BLA]; see also BLA's Comments on the ALJ's PD, filed May 6, 2002, at p. 8.) We will modify the decision to state that any interested party may apply for an exemption from the requirements of General Order 143-B, or may apply for the establishment of a pilot program pursuant to Public Utilities Code section 1202(D)(1)(A), at a later time.

MWA points out that the decision incorrectly states that MTA opposes the no-horn zone. (See D.02-05-047 at p. 28.) Although MTA originally challenged the no-horn zone, it later withdrew its objections. (See MTA's Comments to the PDs, dated May 6, 2002, and MTA's Second Amended Comments to the PDs, dated May 14, 2002.) Thus, we will modify the decision to correct this error. Finally, we will modify the decision to delete language that is inconsistent with the findings and conclusions discussed in this order and to correct other minor errors.

2. MWA's request for oral argument is denied

MWA requests oral argument on no-horn zone issue. MWA suggest that, if the Commission's decision not to establish a no-horn zone at Avenues 45 and 50 rests on the particular features of these crossings, oral argument may assist

the Commission in identifying what those features are, and in determining whether such features render a no-horn zone inappropriate. BLA contends that this issue does not meet the requirements of Rule 86.3. In addition, as stated above, BLA states that MWA has other means of seeking the establishment of a no-horn zone.

Rule 86.3 states that an application for rehearing will be considered for oral argument if the application or response (1) demonstrates that oral argument will materially assist the Commission in resolving application, and (2) the application or response raises issue of major significance because the challenged decision:

> (i) adopts new precedent or departs from existing Commission precedent without adequate explanation;
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> (ii) changes or refines existing Commission precedent;
>
> (iii) presents legal issues of exception controversy, complexity or public importance; and/or
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> (iv) raises questions of first impression that are likely to have significant precedential impact.

We do not believe that oral argument will assist the Commission in resolving the issues raised by MWA. As stated above, the record in this case dopes not support the establishment of a no-horn zone at this time. Therefore, we will deny MWA's request for oral argument.

C. Other Modifications and Corrections

There are a number of other minor modifications that we will make to correct errors and inconsistencies in the decision. These modifications are detailed in the ordering paragraphs below.

Therefore **IT IS ORDERED** that:

1. D.02-05-047 is modified as follows:

   a. On pages 21-23, delete the entire discussion entitled "Noise Issue" and replace with the following:

Association and MWHA are particularly concerned with the noise that would emanate from bells and horns associated with crossing gates and the train if at-grade crossings are constructed. They assert that the geography of the neighborhood is such that the noise would reverberate up the hill and be a constant nuisance to the residents. These warnings would initially be sounded 200 times per day as trains approach the crossing. This could increase to 250 times per day if ridership so warrants. (Tr 1268)

Association and MWHA both point to a "quiet zone" established by ordinance in the City of Los Angeles (L.A. Municipal Code, Sec. 72.12), which prohibits blowing or activating a whistle or horn in the Mount Washington area. However, this ordinance is clearly preempted by state law when it comes to rail safety. (See, e.g., Attorney General Opinion No. 86-504 (69 *Op. Attorney Gen. Cal* 203).)

GO 143-B, which is applicable to light rail, requires that a light rail vehicle ("LRV") must ring a bell or whistle when approaching a crossing protected by automated crossing signal. (Sec. 7.09) However, the Commission may grant exemptions from the requirements of the General Order when there is justification to do so. (Sec. 1.07)

In their comments on the proposed decisions, both Staff and BLA oppose the establishment of a no-horn zone at this time. BLA contends that there is no credible evidence of a noise problem that would justify a no-horn zone. Instead, BLA proposes the use of a "quacker-type" horn, which meets the requirements of GO 143-B in a less obtrusive way than traditional horns. BLA and Staff point out that this is a safety issue. Staff contends that a thorough analysis by Staff and careful consideration by the Commission is required to change these safety standards. Finally, BLA and Staff suggest that this is an operational issue that must be addressed by the train operator, MTA.

> We do not believe that the record supports elimination of the audible warning required by GO 143-B at this time. First, MWHA has presented little evidence to indicate the noise is excessive. On the other hand, BLA has presented evidence indicating that the noise from the Blue Line operations will be consistent with the existing community noise level in the Mount Washington area. (Ex. 59, pp. 3-4) More importantly, we are not convinced that the crossing will be safe if the train does not sound audible warnings when approaching the crossings. Therefore, we will not grant an exemption from GO 143-B at this time. We do, however, find merit in the use of a "quacker-type" horn that will lessen the noise as the train approaches the crossing.
>
> In response to the concerns of the Mount Washington residents, Blue Line has agreed to the cessation of audible warning devices once crossing gate arms are horizontal at Avenue 45. This refers to the stationary bell that is associated with the lowering of the gate. (Tr 1710-1711) It does not appear that any party objected to this condition. (R.B. p 22) We find it appropriate to include Avenue 50 in this condition.
>
> Any interested party, including the Association, MWHA, or MTA, may file an application for an exemption from the audible warning requirements of GO 143-B, or for a pilot program under section 1202(d)(1)(A), if applicable. The system operator, MTA, must be involved in this process and Staff must have the opportunity to analyze any such request.

b. On page 24, in the final full paragraph, delete the second sentence that reads: "Staff does not oppose the at-grade crossings." Replace with the following:

> Staff does not oppose the Pasadena at-grade crossings, except for the Del Mar crossing.

c. On page 28, delete the first full paragraph (discussing the potion of the order that waives the horn or whistle requirement at Avenues 45 through 57).

d. On page 30, delete Finding of Fact No. 15, and replace with the following:

> 15. Association and MWHA favor eliminating the requirement to sound a train horn or whistle every time a train approaches Avenues 45 and 50. The Authority has proposed the use of a "quacker-type" horn as a less obtrusive alternative to standard horns, and also suggested that MTA, the Blue Line's operator, determine whether to apply for a pilot program to establish a no-horn zone.

e. On page 30, delete Finding of Fact 14 and replace with the following:

> 14. Staff does not believe that an at-grade crossing at Avenue 45 is safe and has raised objections to the Del Mar at-grade crossing because of alleged changes to applicant's proposal. Staff does not oppose at-grades crossings elsewhere.

f. On page 30, insert the following as Finding of Fact 15a:

> Staff opposed the establishment of a no-horn zone for Avenues 45 and 50 because it has not had the opportunity to analyze the safety of such a proposal.

g. On page 32, in Conclusion of Law No. 3, delete the words "Avenues 57-45" and replace with "Avenues 45, 50, 51-57."

h. On page 33, delete Conclusion of Law No. 4 and replace with the following:

> 4. Although GO 143-B allows the Commission to grant exemptions to its requirements, the evidence in this case does not clearly demonstrate that the Avenues 45 and 50 crossings will be safe without horns, nor that the noise is so excessive as to justify such an exemption.

2. Rehearing of D.02-05-047, as modified, is denied.

3. MWA's request for oral argument is denied.

This order is effective today.

Dated October 3, 2002 at San Francisco, California.

HENRY M. DUQUE
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

I dissent.

/s/ LORETTA M. LYNCH
President

I dissent.

/s/ CARL W. WOOD
Commissioner